THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.	:	
	:	
Plaintiff,	:	
	:	C.A. NO.: 03-394 E
v.	:	
	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.	:	
	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION FOR RECONSIDERATION

Defendant, Central Transport International, Inc., ("CTI") hereby submits its Memorandum of Law in support of its motion for reconsideration of the Court's Order of August 17, 2005, denying CTI's motion for summary judgment as to Count Two of plaintiff, Accu-Spec Electronic Services, Inc.'s Complaint.

INTRODUCTION

In its Memorandum Opinion of August 17, 2005, this Court rejected CTI's argument that, in an instance where the shipper of freight had hired a freight forwarder to arrange with carriers for the actual transportation of that freight, the shipper's remedy for any loss or damage to that freight, under 49 U.S.C. § 14706, would be exclusively against the freight forwarder. This Court instead held that such a shipper would have an action against either the freight forwarder or the origin or destination carrier which had actually moved the freight. In reaching its decision, the Court relied on *dicta* from several cases, none of which addressed the precise issue presented by CTI's motion, which concerned a very narrow point of statutory interpretation. CTI contends that the Court's reliance on *dicta* should not provide a foundation for the Court's holding and requests that the Court reconsider its previous ruling.

ARGUMENT

Mere *dicta* in prior opinions are neither binding on this Court, nor should they be controlling. See American Civil Liberties Union v. Schundler, 168 F.3d 92, 98 n.6 (3d Cir. 1999).

In its analysis of the issue before it, the Court initially referenced Gulf & Western Indus. Inc. v. Old Dominion Freight Line, Inc., 633 F. Supp. 688 (M.D.N.C. 1986). Gulf & Western involved a shipper which had used the services of a freight forwarder to arrange for the transportation of its freight. The issue before the court, however, was not whether the shipper had a direct action against the carrier. The issue was whether the shipper could avoid the time-bar for damage claims, which was a provision in the contract between the freight-forwarder and the carrier, by filing a negligence claim directly against the carrier. The Gulf & Western court's statement that shippers who had engaged freight forwarders could directly sue the carriers who actually had moved the freight was nothing more than mere *dicta* and, therefore, should not provide a legal basis for this Court's decision denying CTI summary judgment.

This Court also relied on Beautifax, Inc. v. Puerto Rico Marine Mgmt., 611 F.Supp. 537 (D. Md. 1985). The Beautifax case also involved a shipper which had engaged a freight forwarder to arrange for transportation of its freight, which was ultimately damaged in transit. The court held that both the freight forwarder and the delivering carrier were proper defendants in a case brought under the Carmack Amendment.

Although the Beautifax court ultimately found that both the freight forwarder and the delivering carrier were proper defendants, it is clear from the opinion that the court never considered 49 U.S.C. § 14706(a)(2) which states that "[a] freight forwarder is both the receiving and delivering carrier, ...". Without having considered that provision of the statute, it must follow that the Beautifax court never addressed the issue of whether, in the case where a freight forwarder issued the original bill of lading as Logistics Plus did in this case, if the shipper must look exclusively to the freight forwarder. This is the exact issue presented by CTI in the instant case. As with Gulf & Western, the Beautifax case should not provide this Court with a legal basis on which to resolve the precise issue before it.

This Court also considered Phoenix Assurance Co. v. K-Mart Corp. 977 F. Supp. 319, (D.N.J 1997). In its Memorandum Opinion, the Court acknowledged that the Phoenix court only "implied" that both the origin carrier and a freight forwarder could be sued for damaged freight under the Carmack Amendment. Memorandum Opinion at 6. As with the other cases relied upon by the Court, the Phoenix case did not address nor did it resolve the precise issue presented by CTI's motion and, therefore, should not be relied upon by this Court.

Finally, this Court also noted that the Gulf & Western court had relied on the Supreme Court's decision in Chicago, Milwaukee, St. Paul & Pacific Railroad Co. et al. v. Acme Fast Freight, Inc., 336 U.S. 465 (1949). The issue, however, before the Chicago court, however, was not whether a shipper, which had hired a freight forwarder, had a remedy against both the freight forwarder and an underlying carrier. The language from Chicago relied upon by both this Court and the Gulf & Western courts was mere *dicta* and should not be relied upon by this Court.

CONCLUSIONS

As CTI argued in its initial motion, the Carmack Amendment identifies a freight forwarder as both the origin and destination carrier. Morevoer, the Carmack Amendment identifies both the origin and destination carriers as proper defendants in a loss and damage claim. When the statute is read as a whole, it is clear that when a freight forwarder has been engaged to arrange for the transportation of a shipper's freight, the shipper must look exclusively to the freight forwarder for a remedy for damage to its freight. The cases relied upon by this Court do not reach holdings to the contrary as none of them addressed the precise issue presented by CTI. Therefore, CTI requests that this Court reconsider its previous ruling and enter summary judgment in CTI's favor.

Respectfully submitted,

s/ Jeffrey D. Cohen
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Dated: August 29, 2005

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ACCU-SPEC ELECTRONIC SERVICES, INC.	:	
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v.	:	
	:	
CENTRAL TRANSPORT	:	
INTERNATIONAL, INC. and	:	
LOGISTICS PLUS, INC.	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following documents were filed with the Court electronically and served this 29th day of August, 2005.:

1. Central Transport International, Inc.'s Motion for Reconsideration, and

2. Memorandum of Law in Support of Central Transport International, Inc.'s Motion for Reconsideration

via U.S mail delivery, upon counsel listed below:

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